

THE HON'BLE SRI JUSTICE C.V. RAMULU

Wednesday, 29th November, 2006

W.P.No.4817 of 2005

Between:

The Cooperative Electric Supply
Society Limited Village Electricity
Workers Union, rep. by its
President D. Prabhakar Rao ... Petitioner

and

State of A.P. rep. by its Principal
Secretary to Govt., Agriculture and
Cooperation (Coop.II) Department,
Secretariat, Hyderabad & others ... Respondents

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ORDER:

This Writ Petition is filed seeking a Mandamus declaring the action of the 1st respondent in appointing the 3rd respondent as Managing Director of the Cooperative Electric Supply Society (CESS) Limited, Siricilla, Karimnagar District under G.O.Rt.No.1140, Agriculture and Cooperation (Coopn.II) Department, dated 25-10-2004 as arbitrary and illegal and consequently to direct the authorities to appoint a qualified person as Managing Director of CESS Limited, Siricilla, Karimnagar District.

Petitioner claims to be the President of the Cooperative Electric Supply Society/Village Electricity Workers' Union, Siricilla. Apart from that, he claims to be a permanent member of the CESS, Siricilla. The CESS has been formed to purchase electricity from A.P. Transmission Corporation and distribute the same to its members on reasonable price. The society has got 1,90,000 members and electricity is supplied to entire Siricilla sector. There are nine such societies in the State. It has got awards for its best performance. Under the impugned G.O., respondent No.3-B.Ashok has been appointed as Managing Director of the Society. This appointment has been made on the recommendation of the local MLA contrary to the bye-laws and service conditions of CESS Ltd., Siricilla. As per bye-law No.6(1) for appointment of a General Manager, the qualifications required are a Master's Degree or a II Class Commerce Degree in law of any

recognized Indian University with at least 3 years experience in any big establishment in a responsible capacity, such as, Additional Registrar/Joint Registrar from the Cooperative Department or Superintending Engineer from A.P.S.E.B., vide Resolution No.4.4 of the General Body meeting held on 29-12-1997. The Managing Director appointed under the G.O. (3rd respondent) does not possess the requisite qualifications. He is not a Superintending Engineer of Andhra Pradesh Transco. He is only a Divisional Engineer in Transco. Therefore, the appointment of the 3rd respondent, made under the impugned G.O. yielding to the recommendations of the local MLA, is contrary to the bye-laws of the Society; therefore, the same is arbitrary and illegal.

A detailed counter affidavit has been filed by the 1st respondent stating that in the cause title the petitioner tried to project himself as if he is the President of the Society. CESS and the Village Electricity Workers Union are altogether different. Petitioner is not an aggrieved party; therefore, he cannot challenge the Order of the 1st respondent appointing the 3rd respondent as the Managing Director of the Society. He has no *locus standi* to question the appointment of the 3rd respondent as Managing Director. Petitioner is not questioning the impugned G.O. either in individual capacity or in the nature of a public interest. As per bye-law No.6(1), the qualifications for appointment and service of the person who has to be appointed as Managing Director are that he/she should have a Master's Degree or a Second Class Degree from any recognized University of India with at least three years experience in a reputed establishment. Further, the bye-laws of the society provide that the Board of Directors shall appoint Managing Director with prior approval of the Registrar. Accordingly,

taking into consideration these provisions, orders have been passed appointing the 3rd respondent as Managing Director; as such there is no infirmity in the action of the Government in appointing the 3rd respondent as Managing Director. The allegation that the appointment of the 3rd respondent was made on the recommendation of the local MLA is baseless. Taking into consideration all the facts and relevant bye-laws, the impugned Orders were passed appointing the 3rd respondent as Managing Director. Further, in view of the experience of the 3rd respondent and his qualifications, orders were passed appointing him as Managing Director.

Respondent No.3 filed a separate counter affidavit denying the allegations made by the petitioner and further stating that right from 1969 onwards, the Divisional Electrical Engineer or Assistant Electrical Engineers, who are on deputation to CESS, were appointed as Managing Directors of CESS Ltd., Siricilla. As many as 9 examples have been given in the counter. Further, the Village Electricity Workers Union conducted elections of its office bearers on 3-1-2004 and one M.Ramreddy was elected as President and D.Prabhakar Rao is not the President of the said Union as on the date of filing of the Writ Petition, as intimated by the present office bearers of Village Electricity Workers Union vide their letter dated 27-1-2004 addressed to the Managing Director of CESS Limited, Siricilla. Therefore, the Writ Petition filed by D.Prabhakar Rao representing as the President of the Village Electricity Workers Union is not maintainable and the said Prabhakar Rao is nothing to do with the said Village Electricity Workers Union. Further, the members of the Union are not employees of CESS Ltd., Siricilla, but they are employees of the respective village Gram Panchayats; therefore, the Writ Petition is liable to be dismissed.

Learned counsel for the petitioner strenuously contended that the 3rd respondent is not qualified for being appointed as Managing Director of CESS Ltd., Siricilla and it was done only at the behest of the local MLA and the same is contrary to the bye-laws of the society.

Learned Government Pleader appearing for the 1st respondent stated that the petitioner has no *locus standi* to file the Writ Petition. Further, the Writ Petition is not maintainable, since the bye-laws of the society are not statutory in nature nor they have statutory flavour and no Mandamus can be issued by this Court by examining as to the correctness or otherwise of the appointment made by the 1st respondent.

Whereas, Sri P.V. Narayana Rao, learned counsel appearing for the 3rd respondent stated that, in fact, the 3rd respondent was on deputation as a Divisional Engineer and his services were placed at the disposal of CESS Limited, Siricilla and in view of the fact that he is a suitable person his name was recommended for being appointed as Managing Director. The petitioner has no *locus standi*, firstly, he is not the President of the Society as on the date of filing of the Writ Petition and secondly, it is being a service matter, the bye-laws, if any, cannot be enforced by way of issuance of a Mandamus.

I have given my earnest consideration to the respective submissions made by the learned counsel on either and perused the impugned Order and other material made available on record.

The fact that the Society has been appointing Divisional Engineers of A.P. Transco as its Managing Director since 1969 and the statistics furnished by the 3rd respondent at para-9 of the counter are not denied by the petitioner by filing a reply affidavit nor it is denied that the petitioner was not the validly elected President of the Village

Electricity Workers Union, Siricilla as on the date of filing of the Writ Petition. Further, the bye-laws have no statutory force whatsoever. Even the learned counsel for the petitioner also stated that the bye-laws are not made under Rule 72(3)(b) of the A.P. Cooperative Societies Rules by the Registrar. These are all the bye-laws adopted by the society itself; may be, it was approved thereafter by the authorities concerned. But, that itself will not have any statutory force for the purpose of entertaining a Writ Petition and issue a Mandamus as prayed for. May be, the practice and convention as prevailing for the last more than 30 years has been taken as an example and the 3rd respondent was appointed. Since the bye-laws have no statutory force or flavour, I am of the opinion that no Mandamus can be issued declaring the appointment of the 3rd respondent as arbitrary and illegal basing on the non-statutory regulations i.e. bye-law No.6(1) of the bye-laws of the society. The Writ Petition is devoid of merits and is liable to be dismissed.

Accordingly, the Writ Petition is dismissed. No order as to costs.

29-11-2006

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